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IN THE UNITED STATES JUDICIAL DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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CLEARONE COMMUNICATIONS, INC.,  
a Utah corporation,

Plaintiff,

v.

ANDREW CHIANG, an individual, JUN  
YANG, an individual, LONNY BOWERS,  
an individual, WIDEBAND SOLUTIONS,  
INC., a Massachusetts corporation, and  
BIAMP SYSTEMS CORPORATION, an  
Oregon corporation,

Defendants.

**MEMORANDUM DECISION AND  
ORDER GRANTING MOTION  
REGARDING FURTHER DEPOSITION  
OF JUN YANG [845]**

Case No. 2:07 CV 37 TC

District Judge Tena Campbell

Magistrate Judge David Nuffer

ClearOne has moved to take additional factual deposition of Jun Yang on two topics – the origin of some source code and the relationship of Yang and a recipient of royalty income related to disputed products.<sup>1</sup> WideBand Defendants object that “ClearOne has [already] deposed June Yang for 15.5 hours, first as a 30(b)(6) designee, and then on an individual basis (April 20 and October 1-2, 2007).”<sup>2</sup> But ClearOne claims that *after* those days of deposition, it needs

to discover information pertaining to the origins of the FC101 code, and to test Yang’s purported explanation for why parts of the code are identical to ClearOne’s Honeybee Code. In addition, ClearOne is entitled to discover basic information about Versatile DSP, Inc. (“Versatile”), an entity which ClearOne

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<sup>1</sup> Motion to Question Jun Yang on Certain Topics at His Second Deposition at 2, docket no. 845, filed April 29, 2008.

<sup>2</sup> Wideband Defendants’ Memorandum in Opposition to Plaintiff’s “Motion to Question Jun Yang on Certain Topics at His Second Deposition” at 2, docket no. 868, filed May 19, 2008.

only recently learned received tens of thousands of dollars from the WideBand-Biamp License Agreement.<sup>3</sup>

ClearOne claims that these belated inquiries are legitimate because ClearOne did not discover that portions of the FC101 code were allegedly taken from ClearOne code until November 28, 2007.<sup>4</sup> ClearOne did not ask for this code until one day after Yang's last day of deposition.<sup>5</sup> ClearOne did not deliver this code to its expert until early this year, after the court decided a motion limiting the expert's use of that code by the terms of the protective order.<sup>6</sup> The FC101 code is alleged to have certain elements directly copied from ClearOne code.<sup>7</sup> "Resolution of that dispute is beyond the Court's purview in a pretrial motion."<sup>8</sup>

ClearOne also claims it had no prior opportunity to ask for information about Versatile because its role as a royalty recipient was known only in late November 2007.<sup>9</sup> ClearOne's complaint was amended to include Versatile in late February 2008.<sup>10</sup> WideBand Defendants claim the delay is solely attributable to ClearOne.

ClearOne never asked for information about license or royalty payments until the service of its Sixth Set of Request for Production of Documents on October 3, 2007, again after Jun Yang's deposition. The timing of when ClearOne learned about Versatile DSP is solely due to ClearOne.<sup>11</sup>

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<sup>3</sup> Memorandum in Support of Motion to Question Jun Yang on Certain Topics at His Second Deposition at 2, docket no. 847, filed April 29, 2008.

<sup>4</sup> Supporting Memorandum at 3.

<sup>5</sup> Opposition Memorandum at 2.

<sup>6</sup> Supporting Memorandum at 3-4; Opposition Memorandum at 2-3.

<sup>7</sup> Supporting Memorandum at 4-5.

<sup>8</sup> Opposition Memorandum at 3.

<sup>9</sup> Supporting Memorandum at 5.

<sup>10</sup> *Id.*

<sup>11</sup> Opposition Memorandum at 5.

The magistrate judge agrees that “WideBand responded to discovery when it was asked; it is not the defendants’ fault that ClearOne did not ask earlier.”<sup>12</sup>

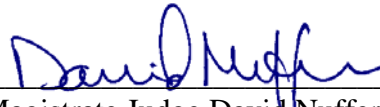
This is not a matter of “fault,” however. The issue is *adequate discovery* so that the parties are prepared for trial, and to engage in settlement discussions in advance of trial. The discovery sought – as to the FC101 code and Versatile – will advance knowledge of the parties for their own benefit and for the benefit of the court.

**ORDER**

IT IS HEREBY ORDERED that the motion<sup>13</sup> is GRANTED.

Dated this 27th day of May, 2008.

BY THE COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

Magistrate Judge David Nuffer

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<sup>12</sup> *Id.* at 5-6.

<sup>13</sup> Motion to Question Jun Yang on Certain Topics at His Second Deposition, docket no. 845.